

FILE COPY

Office - Supreme Court, U. S.

FILED

JAN 5 1949

CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 497

WILLIE MELMOTH BOMAR,

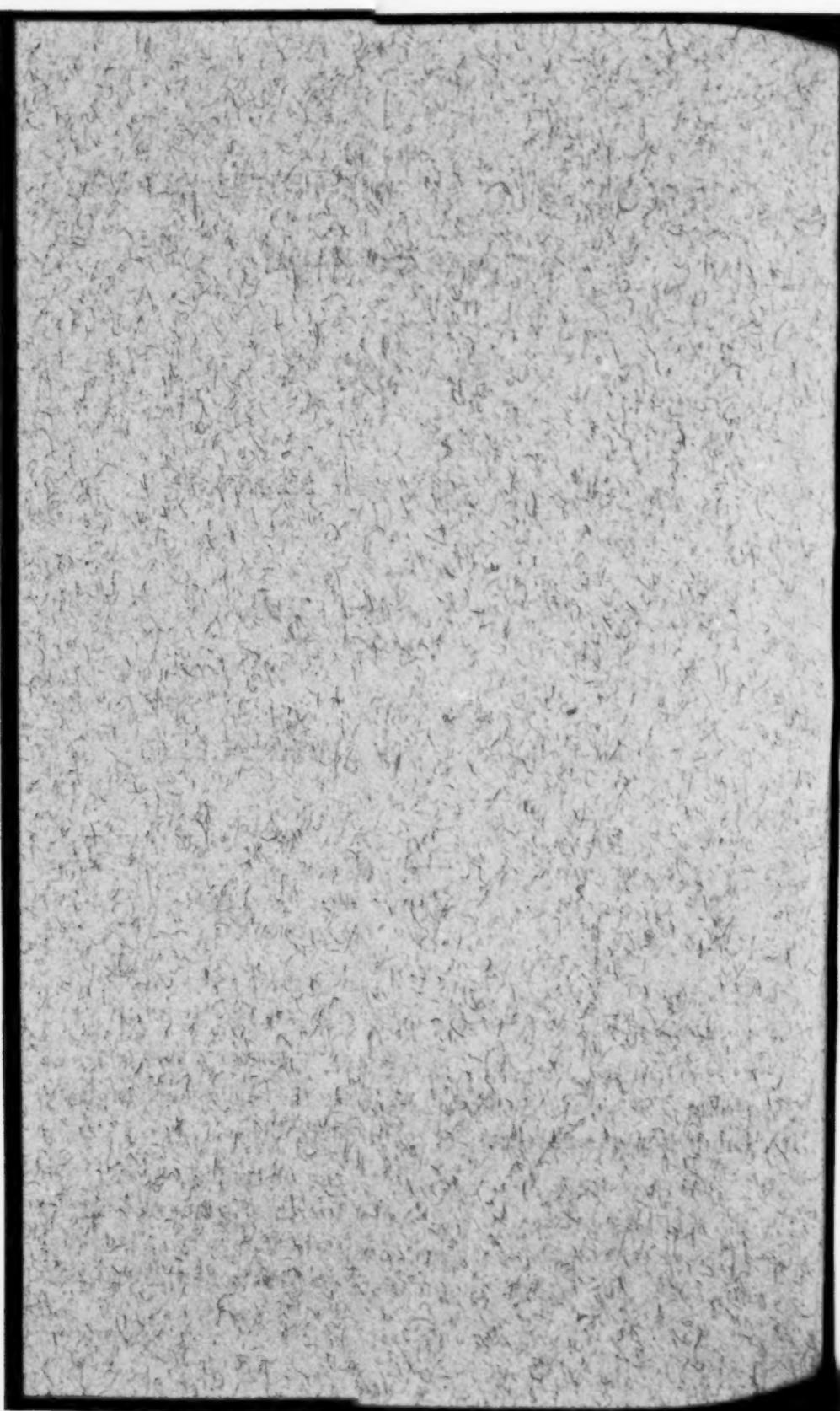
Petitioner,

vs.

ROWENA KEITH KEYES AND THE CITY OF NEW
YORK

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT.

† WILLIE MELMOTH BOMAR,
Pro Se.



SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1948

No. 497

WILLIE MELMOTH BOMAR,
Petitioner,
vs.

ROWENA KEITH KEYES AND THE CITY OF NEW
YORK

PETITION FOR WRIT OF CERTIORARI

*To the Honorables, the Chief Justice of the United States
and the Associate Justices of the Supreme Court of the
United States:*

Your petitioner, Willie Melmoth Bomar, respectfully submits her petition for a writ of certiorari to:

(1) Review the findings of the United States Circuit Court of Appeals, Second Circuit, in the above entitled case, handed down under date of October 8, 1948.

(2) Pass upon the legality of the so-called "order" of the United States District Court for the Southern District of New York signed in the New York Court on November 29, 1948, but which was mailed to petitioner from New

York under the mailing date of December 21, 1948. That so-called "order" is here reproduced:

"At a Term of the United States District Court held in and for the Southern District of New York, United States Court House, Foley Square, in the Borough of Manhattan, City of New York, on the 26th day of November, 1948.

"Present: Hon. George Murray Hulbert, United States District Judge

Civil 33-487

WILLIE MELMOTH BOMAR, Plaintiff,
against

ROWENA KEITH KEYES, Defendant

"The plaintiff having appealed to the United States Court of Appeals for the Second Circuit from an order of this Court entered December 17, 1947, dismissing the complaint as against the City of New York and directing that the title of the action be amended so as to read 'Willie Melmoth Bomar, plaintiff, v. Rowena Keith Keyes, defendant', and that the action proceed as against the said defendant, and the said appeal having come on to be heard and been argued and the said Court of Appeals for the Second Circuit having rendered its decision dismissing the said appeal, and having filed its mandate on October 26, 1948, it is

"ORDERED, adjudged and decreed that the mandate of the United States Court of Appeals for the Second Circuit, dismissing the aforesaid appeal, be and the same hereby is made the order and judgment of this Court.

HULBERT,
U. S. D. J.

"Judgment entered:

WILLIAM V. CONNELL,
Clerk.

Nov. 29, 1948."

(3) Review and pass upon the many irregularities which have characterized this action in its course through the hostile courts of the City of New York.

Statement of Case

This appeal is made by an American citizen to the highest American court in an effort to secure the justice which American courts are supposed to vouchsafe to American citizens and not reserve mainly for foreigners who rush to these shores and clamor for relief from oppression.

For example, the petitioner in this action is an American citizen who seeks redress for the interruption of her professional career and deprivation of means of livelihood suffered when, as a teacher in the public school system in America's largest city, New York, she was charged with *Neglect of Duty* because of her service—at personal financial loss because of the withholding of her salary by the City of New York—as a juror in the Federal District Court for the Southern District of New York. In this appeal, petitioner is asking that America's highest court declare invalid the decision of the United States Circuit Court of Appeals, Second Circuit, which, under date of October 8, 1948, refused to set aside the action of United States District Judge Simon Rifkind when, under date of December 17, 1947, he signed an order decreeing "that the complaint, as against the defendant The City of New York, be and the same hereby is dismissed."

At the time of the signing of the above order by a judge in the United States District Court for the Southern District of New York there was pending in the United States Supreme Court a *Petition for Rehearing of Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit* (No. 401, October Term, 1947), "to determine the status of the City of New York

as a defendant." Of that fact, the District Court and the Corporation Counsel of the City of New York, attorney for the defendants, were aware; for there had been filed in the District Court and served upon the Corporation Counsel of the City of New York, attorney for the defendants, the following *Affidavit In Opposition to Defendants' Proposed Order and Notice of Settlement*:

**"DISTRICT COURT OF THE UNITED STATES, SOUTHERN
DISTRICT OF NEW YORK**

Civ. 33-487

WILLIE MELMOTH BOMAR, Plaintiff,

vs.

ROWENA KRITH KEYES AND THE CITY OF NEW YORK.
Defendants

"The plaintiff in the above entitled action, Willie Melmoth Bomar, having been duly sworn, deposes and says:

"In opposition to the defendants' Proposed Order and Notice of Settlement of date of December 10, 1947, scheduled to be submitted to the Court on December 17, 1947, that such Proposed Order and Notice of Settlement should not be heard by the Court because this action is still before the Supreme Court of the United States on a petition for rehearing of the petition for writ of certiorari submitted by the plaintiff in order that there might be a proper clarification of the status of the City of New York as a defendant and a change of venue granted so that the future proceedings in this action may be carried forward in an atmosphere free from the bias and prejudice which have, so far, characterized the proceedings in the New York courts.

"Until action is taken by the Supreme Court of the United States on the above mentioned petition for re-

hearing, copy of which has been served upon counsel for the defendants, this case can not properly come before any other court. Therefore, plaintiff respectfully requests the United States District Court for the Southern District of New York to deny the defendants' Proposed Order and Notice of Settlement.

WILLIE MELMOTH BOMAR,
Plaintiff, *Pro Se.*"

"Verified by plaintiff on the 15th day of December,
1947.

Petitioner has taken notice of the fact that a stay of proceedings was ordered by General Douglas MacArthur while the appeal of the recently convicted Japanese war lords was pending in the Supreme Court of the United States. Does not an American citizen in America whose "offense" was the exercising of her right as an American citizen to serve as a juror in a United States District Court have the right to a determination of a matter pending in America's highest court before a judge in an inferior court takes the issue into his own hands and passes upon it? This appeal presents that question to America's highest court, and asks that the decision of the United States Circuit Court of Appeals for the Second Circuit which, under date of October 8, 1948, failed to set aside the order signed by a United States District Judge concerning a matter which at the time of the signing of the order complained of, was pending in the United States Supreme Court, be reversed.

For long, Americans have complained of their courts—and the lack of justice obtained there. Now, such complaints are finding their way into print in widely circulated periodicals. For example, the article "Let's Have Competent Judges" in the November, 1948, issue of the *Reader's Digest* (pp. 51-54).

In her discussion of this case with many American citizens in many of the States in this country petitioner has

yet to find a single citizen who has not been critical of the action of the courts; and many have, in a defeatist attitude, shugged and exclaimed: "But can you expect to win in an action against the City of New York? Don't you know the courts won't rule against the City of New York?"

Petitioner's reply to such comments has been—and is: "American justice is supposed to be founded on respect for the individual and the individual's rights as a citizen. The City of New York, though powerful, is not yet greater than the country of which it is a part. And if the laws of the land mean anything neither New York nor any other city can trample upon the rights of an American citizen and deprive an American citizen of means of livelihood because, while an employee of the city, the American citizen performs the civic obligation of serving as a juror in a Federal Court."

The entire history of this case is unsavory. An outline is here presented for the perusal of the Court which is charged with safeguarding the rights of American citizens:

Petitioner, as a teacher in the Girls' High School, Brooklyn, New York, was assigned an excessive schedule—six classes per day, mostly of sub-normal children, while the regular teaching load at that school was five classes per day per teacher; and one teacher, Mrs. Ruth K. Klee, toward whom many unusual favors had been shown, all of which were flagrant violations of the so-called "merit" system of which the City of New York boasted in connection with its schools, taught only four classes per day. The principal of the school, Rowena Keith Keyes, was, at the time, a probationary principal. Although aware of the many irregularities in her administration of the school, and

of her actual subversiveness in charging a teacher—petitioner, with *Neglect of Duty* as follows:

“From March 7th to April 4th Dr. Bomar was absent on jury duty 19 days. Since jury duty for women is granted only on their application and since two weeks is the usual limit for such service, I feel that 19 days, or four weeks, was an excessive amount of time to take from her classes.”

the officials of the City of New York granted permanent tenure to the aforementioned principal and subsequently retired her at a handsome pension. Thus, the City of New York has gone on record as approving subversiveness in its schools and of penalizing Americans who wish to perform duties of American citizenship without having to forego means of livelihood for so doing.

At a so-called “hearing” granted by New York City officials at which a determination on the charge of *Neglect of Duty* because of Federal jury service while teaching at the Girls’ High School, Brooklyn, was to be made, petitioner was denied the right of counsel, New York’s officials ruling that *no one outside its public school system could be present*. That was drawing an *iron curtain* around an American citizen in her own country.

Although aware that redress for penalization because of the performance of a civic obligation rested in the Federal courts, petitioner sought to lay before the officials of the State of New York the malodorous conditions existing in New York City’s so-called “merit” system of public education so that corrective measures might be taken. For reasons best known to themselves however the State officials appealed to chose to wink at justice and place the stamp of approval on subversiveness. The State Commissioner of Education, Ernest E. Cole, was on the eve of

retirement, and he chose to dismiss the matter on the basis that, as a probationary teacher, petitioner had no right to be heard. An appeal to State Supreme Court Judge William Murray—whose name has figured in unfavorable comments on the honor and integrity of the courts—to compel the State Commissioner of Education to pass upon the matter of the charges made—since, in order to dispense with petitioner's services as a teacher, New York City's officials did not have to make any charges whatsoever, and by so doing they had placed themselves liable—resulted in the State Judge's upholding of the State Commissioner of Education on his plea that as a probationary teacher petitioner had no right to be heard.

But a probationary teacher in New York, who is an American citizen, has rights of citizenship which must not be trampled underfoot. So, as an *American citizen* petitioner filed an action seeking damages for the wilful and malicious action on the part of New York City's officials for penalizing her to the point of deprivation of livelihood because, while a city employee, petitioner served as a Federal juror.

Prior to her coming into the Federal courts to seek redress for the irreparable damages wilfully and maliciously inflicted upon her by the City of New York and its agents because of her performance of Federal jury service while employed by the City of New York in its public education system, petitioner, pursuant to § 394 a—1.0 of Title A, Chapter 16, of the New York City Charter and Administrative Code presented her claim for damages to the Comptroller of the City of New York. That claim was sent to the Comptroller of the City of New York under date of September 26, 1945, through the United States mails from the United States Post Office in New York City as registered letter No. 386794. Petitioner's action in the United States District Court for the Southern District of New York was filed on October 31, 1945. A motion to dismiss the

complaint was made by the Corporation Counsel of the City of New York, Attorney for defendants, and a hearing was held on January 22, 1946, before United States District Judge Murray Hulbert.

In a decision—which has been characterized as “a soiling of the judicial ermine,” handed down on February 2, 1946, United States District Court Judge Murray Hulbert made this astonishing declaration:

“The educational authorities undoubtedly had the right to entertain, pass upon and determine the charge of absence from duty without leave, and the fact that she was during that period (March 7 to April 4, 1939) actually serving as a trial juror in this court did not excuse her absence and inability to perform her duties as a teacher and there was no violation of her civil rights guaranteed to her by the Constitution of the United States.”

Upon appeal from the above decision of United States District Judge Murray Hulbert to the United States Circuit Court of Appeals, Second Circuit, the case, titled *Willie Melmoth Bomar, Appellant, v. Rowena Keith Keyes and the City of New York, Appellees* (Docket No. 20533, argued April 18, 1947 and decided May 16, 1947), the closing sentence of the Circuit Court of Appeals decision was:

“Judgment reversed; cause remanded for trial.”

That is certainly a clear-cut and concise statement, the meaning of which is clear.

However, despite that clear-cut statement of reversal in a case with two defendants, there was an attempt to construe the opinion to mean that the City of New York was removed as a defendant. That called for an adjudication which petitioner sought to have made by America’s highest court. And it was while the petition for such adjudication was pending in the United States Supreme Court that United States District Court Judge Simon Rifkind,

although aware of the plea for adjudication pending in the Supreme Court, signed an order removing the City of New York as a defendant and adjudging and decreeing that the title of the action "be amended so as to read Willie Melmoth Bomar, plaintiff, against Rowena Keith Keyes, defendant."

As previously stated, the appeal to the United States Circuit Court of Appeals, Second Circuit, for reversal, was denied on October 8, 1948. Petitioner comes now before the Supreme Court seeking a writ of certiorari to review the findings of the Circuit Court of Appeals.

The attempt to remove the City of New York as a defendant appears to be the fulfilment of a wish on the part of the courts to obstruct justice in this case. Certainly the city is responsible for the acts of its agents. Certainly it was the city which refused to pay petitioner's salary for the time she served as a juror in the Federal Court. Certainly it was the city which severed, on one day's notice, petitioner from its payrolls because petitioner had performed an obligation of American citizenship by serving as a juror in the Federal Court.

To argue that the city dissociates itself from its school affairs is pure fiction, as shown by the fact that when there is money to be had for schools or school purposes the city has an outstretched palm for receiving—direct into its Treasury and not through any agency. That is clearly illustrated by the fact that it was to the city proper, not to any board of education or other agency, that the United States Government paid the sum of \$313,701.54 for the war-time use of the Bronx unit of Hunter College as a training school for enlisted women on active duty in the United States Naval Reserve, Women's Reserve.

Since the decision of the United States Circuit Court of Appeals, Second Circuit, under date of October 8, 1948, which refused to reverse the order of United States District

Court Judge Simon Rifkind signed, with knowledge by the court and by the Corporation Counsel of the City of New York, attorney for defendants, that a plea for adjudication of the status of the City of New York as a defendant was pending in the United States Supreme Court at the time, defendant Rowena Keith Keyes, who had been retired by the City of New York on a handsome pension after the beginning of this action, has died. Under the New York mailing date of November 16, 1948, petitioner received, under date of November 29, 1948, a letter from the office of the Corporation Counsel of the City of New York, attorney for the defendants, which reads as follows:

"Re: Bomar v. Keyes.

"The above entitled case appeared today upon the jury day calendar in the United States District Court for the Southern District of New York.

"I regret to advise you that on November 9, 1948, Dr. Rowena Keith Keyes, the defendant in the above entitled action, died. I submit this information to you so that you may govern yourself accordingly. When this case is assigned to a judge for trial, I, of course, will advise him of the death of the defendant."

Prior to receiving this information of the death of defendant Keyes, petitioner had addressed a communication to the Hon. John C. Knox, Calendar Judge, United States District Court, Southern District of New York, requesting him to remove the case from the trial calendar until the appeal could be made to the United States Supreme Court, on or before January 8, 1948, and a decision of that Court could be handed down in regard to the matter of the title of the action. Petitioner, in her letter to Calendar Judge Knox explained: "The case in question was originally titled *Bomar v. Keyes and the City of New York* (Civ. 33-487). My appeal to the Supreme Court will be to keep the title of the action unchanged." Petitioner further set forth to

the Calendar Judge that, according to information received from the Clerk of the United States Circuit Court of Appeals, Second Circuit, under date of November 3, 1948, "The time to file a petition for a writ of certiorari begins to run for ninety days from October 8, 1948." Under date of November 29, 1948, petitioner received from Judge Knox's Chambers a communication signed by Arthur M. Borden, Law Clerk which read as follows:

"This is to inform you that the Calendar Commissioner has entered a stay of your action (Civil 33-487)."

With the facts as contained herein before the Court, your petitioner, an American citizen who has been penalized in her own country for exercising the rights of American citizenship, respectfully requests America's highest court, to grant this petition for a writ of certiorari to review the many irregularities complained of in the prejudicial handling of this case in the New York courts and to pass upon the point at issue concerning the City of New York as a defendant, so that American citizens may know whether they are to be forced to renounce obligations of American citizenship in order to earn a livelihood as teachers in America's public schools.

Respectfully submitted,

WILLIE MELMOTH BOMAR,

*Petitioner pro se.,
(Temporary) P. O. Address,
Glenwood, Georgia.*

Sworn to and subscribed before me this the 31st day of December, 1948.

[SEAL.] *AGNES WOOD WATSON,
Notary Public, Georgia, State at Large.*

My Commission Expires 7-31-49.

